

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. PHELPS,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. C04-5215 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a net fee award of \$7,791.22. The Commissioner has filed a response to Plaintiff's motion without objection to the fee request.

This court has jurisdiction to award attorney fees for work before this Court under 42 U.S.C. § 406(b). Straw v. Bowen, 866 F.2d 1167 (9th Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9th Cir. 1987).

Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees

combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v. Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir. 1970).

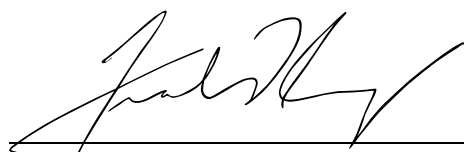
Previously, this Court awarded Plaintiff's counsel \$5,248.78 pursuant to the Equal Access to Justice Act (EAJA). An administrative attorney fee of \$5,300.00 was previously awarded. Plaintiff's counsel now petitions for a gross fee of \$18,265.00. Plaintiff has subtracted from 25% of the past due benefits the amount awarded pursuant to the EAJA and at the administrative level, leaving a net fee of \$7,791.22.

ACCORDINGLY,

IT IS ORDERED:

Plaintiff's Motion for an Award of Attorney's Fees [DKT #26] is **GRANTED**. Plaintiff is awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$7,791.22., minus any § 406(d) administrative assessment.

DATED this 11th day of May, 2007.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE